REMARKS

Claims 1-19 and 24-33 are pending and under consideration with claims 1, 26 and 32 being independent, claims 21-23 were withdrawn from consideration, pursuant to a restriction requirement. In this response, claims 1, 2, 5, 6 and 14 are being amended and claims 4, 13, 24, 25, 26-30 and 32 are being cancelled.

Interview

Applicant greatly appreciates the interview extended by the examiner and with counsel for applicant. In that interview, applicant discussed various features of the disclosure and the cited references.

Rejection under 35 U.S.C. § 102(b) and 102(e)

Claims 1, 3, 17, 25, 26 and 28-30 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Johnson* (U.S. Patent No. 5,215,794). Claims 1, 3, 16, 17, 25, 31 and 33 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Kester* (U.S. Patent No. 6,129,803). Claim 1 has now been amended to clarify the structure of the invention as discussed in the April 8, 2003 Examiner phone conference. Applicant respectfully requests withdrawal of the rejection.

The present invention requires a blow molded container configured to withstand a hot fill or retort application. Additionally, the present invention requires a sidewall having a diameter perpendicular to the central axis and larger than the bowl height. In fact, as the drawings make clear, the sidewall has a small continuous curve between the bottom and upper rim. Furthermore, the present invention requires at least three feet to be co-formed with the bottom

and are configured to extend symmetrically along the bottom. The present invention also requires an upper rim to which a lid can be engaged.

Johnson and *Lester* do not fairly teach or suggest a container having the structure of the present invention. Therefor, for at least these reasons, *Johnson* and *Lester* do not teach the subject matter of claim 1.

Rejection Under 35 U.S.C. § 103(a)

Claims 2 and 4-12 and 15 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Kester* in view of *Chen* (U.S. Patent No. 5, 549,210). Claims 18, 19 and 24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Kester* in view of *Valyi* (U.S. Patent No. 5,939,153) Claims 26-29 and 32 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Kester*. Claim 30 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Kester* in view of *Valyi* . Claim 1 has been amended to further clarify the structure of the invention as discussed in the April 8, 2003 Examiner phone conference. Applicant respectfully traverses the rejections and requests withdrawal of same.

All of the obviousness rejections are based primarily on the application of *Kester*. Yet, *Kester* does not fairly teach or suggest or even relate to a container such as that claimed as previously set forth.

The secondary references *Chen and Valyi* teach a PET plastic bottle that withstands pressure from a carbonated liquid. To withstand the pressure, these references teach a bottle having a thin wall at the label, a narrow neck at the top and a bottom which will prevent blowing out under pressure.

The secondary references, however, are not designed for a hot fill or retort process. Typical PET bottles are relatively thin and contain residual stress resulting from their forming process. These factors lead to weakness and/or distortion during a hot fill/retort process due to the heat applied to the plastic. Additionally, the air in the head space of a PET bottle increases in pressure during the heat stage of the retort process which can cause distortion which does not reverse itself during subsequent cooling resulting in unacceptable container appearance. In the case of a hot fill process, the air and moisture vapor in the headspace results in a slight vacuum as the PET bottle cools which distorts portions of the sidewall. Accordingly, a dent forms in the PET bottle after the hot fill process which results in poor marketability of the PET bottle.

Additionally, the container of the present invention is rigidly configured to withstand hot-fill and retort applications. Other known hot-fill and retort containers are configured to be deformable or include deflection members to accommodate volumetric changes of the contents during the hot-fill or retort applications. Applicants have determined that because of the blow-molded bowl of the present invention, a rigid container without deflection members is achieved.

Applicant respectfully submits that combining the cited references fails to establish a prima facie case of obviousness. To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art See In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Further, not only must the Examiner find each element of the claimed invention in the prior art, the Examiner must show upon "rigorous application" the proper motivation or suggestion to combine wherein the showing "must be clear and particular" See In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 17 (Fed. Cir. 1999).

In order to meet an obviousness requirement, the requirement has to meet some suggestion that the cited references have similar features or structures. To suggest otherwise pertains to an impermissible hindsight reconstruction. The standard, rather, is whether the

reference taken as a whole would have suggested the applicants' invention to one of ordinary skill in the arts at the time the invention was made.

Applicant respectfully submits that since amended claim 1 is patentable, all dependent claims therefrom are also patentable.

CONCLUSION

The Applicant respectfully requests withdrawal of the rejection and believes that the claims as presented represent allowable subject matter. However, if the Examiner desires, the Applicant's attorney is ready for a telephone interview to expedite prosecution. As always, the Examiner is free to call the undersigned at 312-876-2578.

Respectfully submitted,

By ~~its~~ attorney,

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6/4/03 Paula M. Theismann
Date Paula Theismann

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of: G. Manderfield, Jr.	)	
Serial No.: 09/09/543,949	)	Examiner: N. Eloshway
Filed: April 6, 2000	)	Group Art Unit: 3727
For: MOLDABLE CONTAINER WITH BULGING SIDES AND FEET	)	

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In The Claims

1. (Third Amendment) A plastic molded container, comprising:

a blow-molded bowl comprising an upper rim, a bottom, a central axis and a sidewall extending between the upper rim and the bottom, the blow-molded bowl being configured to withstand a hot fill or retort application without deformation, the rim being configured for accepting a lid in engagement therewith, the sidewall in cross sectional profile being a smooth continuous curve between the upper rim and the bottom, the sidewall extending radially outwardly before extending radially inwardly as the continuous sidewall extends downward between the upper rim and the bottom to provide a bulging continuous sidewall, the sidewall further having a diameter, the diameter being perpendicular to the central axis and being larger than the height of the bowl, the height being the distance between the bottom and the upper rim, the blow-molded bowl further comprising at least three feet disposed on the bottom, the feet being co-formed with the bottom and configured to extend symmetrically along the bottom.

2. (Amended) The plastic molded container of claim 1 [further comprising a plurality of feet] wherein the at least three feet are unitarily formed along the bottom as deformations of the bottom.

5. (Amended) The plastic molded container of claim [4] 2 wherein the three feet comprise[s] a first foot that extends along a radius of the bowl as viewed from the bottom thereof, and a second foot and a third foot which extend in opposite directions and perpendicular to the radius along which the first foot extends.

6. (Amended) The plastic molded container of claim 2 wherein the [plurality of feet] at least three feet comprise[s] at least four feet.

14. (Amended) The plastic molded container of claim [13] 1 wherein the lid is rotatably securable to the rim.

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